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ALEXANDER L. STEVAS,
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NO. 82-691

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

IN THE MATTER OF THE APPLICATION

of

BOARDWALK REGENCY CORPORATION
For a Casino License.

On Appeal from the Supreme Court of New Jersey

MOTION OF APPELLEE ATTORNEY GENERAL OF NEW JERSEY TO DISMISS OR AFFIRM

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The appellee Attorney General of New Jersey respectfully moves pursuant to Rule 16.1(b) and (d) of the Court to dismiss the appeal or affirm the judgment of the Supreme Court of New Jersey on the ground that the constitutional questions raised by appellants are so insubstantial as not to warrant further review by the Court.

Counter-Statement of the Case

The State of New Jersey historically has viewed gambling as an undesirable activity, initially proscribing it in all forms by making it an indictable offense (Patterson, Laws, 1224 (1897); N.J. Const. (1844), Art. IV §VII par. 2 and as amended in 1897) and thereafter barring any such activity except as specifically authorized by the 1947 Constitution or by subsequent public referendum, N.J. Const. (1947) Art. IV §VII, par. 2. Since casino gaming was not listed among the limited exceptions set forth in the 1947 Constitution, an initial proposal for implementing casino gaming throughout the State could only be authorized through a public referendum. This referendum however was overwhelmingly defeated by the electorate of the State in 1974. Only when the proposal to amend the State Constitution was limited so to permit legislative authorization of certain casino gaming activities within the boundaries of Atlantic City was voter approval obtained. *Knight* v. *City of Margate*, 86 N.J. 374, 380, 431 A.2d 833, 836 (1981); Note, "The Casino Act: Gambling's Past and the Casino Act's Future," 10 Rutgers—Camden Law Journal 279, 289 and n.79 (1979).

The Casino Control Act, N.J.S.A. 5:12-1 *et seq.* represents a measure of the State's commitment to its citizens that the licensure process for gaming operators would be sufficiently scrutinous and selective so as to allow only the best, most dependable and trustworthy of applicants to be licensed. Accordingly, the Legislature has imposed on the applicant the burden of establishing his good character, honesty and integrity and reputation for same by clear and convincing evidence, N.J.S.A. 5:12-89(b)(2) (App. A at 6a to 7a; App. B at 26a to 29a).

In the instant case the Casino Control Commission and thereafter the Superior Court of New Jersey, Appellate

Division, and Supreme Court of New Jersey concluded that Clifford and Stuart Perlman, necessary prequalifiers for licensure by virtue of their corporate positions with and equity holdings in Caesars World, Inc. ("CWI") and its affiliates* (App. C at 43a and 59a; N.J.S.A. 5:12-85(c) and (d)), had failed to satisfy this statutory test (App. A at 6a to 7a; App. B at 20a; App. C at 56 to 61a). In reaching this conclusion, the Commission found the Perlmans to have initiated and fostered "direct, intense [and] longlasting" transactions on behalf of the parent corporation of the New Jersey casino applicant (Boardwalk Regency Corporation, "BRC") with persons not only "known or reputed to be linked with organized crime figures" but as appellants conveniently fail to note (Js4) a person convicted of crimes inimical to the integrity of the casino industry (App. C at 57a to 58a; 59a to 60a), thereby presenting these unsavory individuals with the "obvious opportunity" to achieve a preeminent and dangerous position with regard to CWI's financial fortunes (App. C at 58a). The Commission further concluded from the evidence presented that the Perlmans knowingly failed to impart to the CWI Board of Directors critical knowledge as to these individuals which might have dissuaded or foreclosed the Board's approval of the initiation or continuation of these commercial relationships (App. C at 48a-50a; 57a; 60a). Finally,

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*Boardwalk Regency Corporation ("BRC") is a wholly-owned subsidiary of Ceasars New Jersey, Inc. ("CNJ"), a New Jersey corporation, which in turn is an approximately 85% subsidiary of Caesars World Incorporated ("CWI"), a Florida corporation. Clifford Perlman served at all times relevant hereto as Chairman of the Board of Directors and chief executive officer of CWI and CNJ (App. A at 4a). At all times relevant herein Stuart Perlman served as Vice-Chairman of the Board of Directors of CWI and CNJ, *Ibid.*). The Perlmans also previously held the two largest blocks of CWI stock (*Ibid.*).

the Commission found the Perlmans to have ignored Nevada gaming regulators' admonitions and expressions of disapproval of CWI's and Clifford Perlman's continued business relationships with these disreputable men (App. C at 52a to 54a; 57a; 60a).

Of crucial concern to the Commission in this regard was the evidence of the complex union of CWI as well as Clifford Perlman with Alvan Malnik and Samuel Cohen, men whose widespread reputations as associates of Meyer Lansky, an undisputedly reputed organized crime figure, were known to both Clifford and Stuart Perlman at the time (App. C at 49a). Of particular import was the Perlmans' knowledge prior to initiating the first CWI transaction (in July, 1971) with Malnik and Cohen (the Sky Lake North real estate transaction) of Cohen's criminal record and reputation: (a) his conviction in February 1971 for the unlawful, willful and knowing sale and buying of commodities in violation of 7 U.S.C. §§6a and 13 and 18 U.S.C. §2 and consequent payment of a $140,000 fine (Ra41 to Ra48; Aa25 ¶16); and more significantly, (b) his indictment by a federal grand jury in Miami on March 25, 1971 with Meyer Lansky and an employe of CWI's Nevada casino, Caesars Palace, on charges of conspiracy in violation of 18 U.S.C. §371 to skim revenues of the Flamingo Hotel in Las Vegas (App. C at 49a).*

Despite this knowledge and the heavily regulated status of the casino industry in Nevada, the Perlmans advised the

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* Cohen was later to plead guilty in January 1973 to two counts of a superseding indictment (Ra54 to Ra72), charging him with filing false income tax returns for which he was sentenced to one year imprisonment and fined $120,000 (Aa42 ¶41), facts of which the Perlmans were apprised.

outside directors of CWI only of Cohen's violation of the Commodity Exchange Act, failing therefore to inform them at the time of their consideration of the Sky Lake proposal of the pending indictment of Cohen and Lansky (App. C at 49a to 50a). Thus Stuart Perlman "assumed" that all the directors knew of the indictment, even though no outside director lived in either Nevada or Florida where the indictments had been issued and the publicity centered and though the subject was not specifically discussed at the meeting (App. C at 50a). Equally telling is Clifford Perlman's explanation that he did not consider Cohen's indictment a "sensitive" issue (App. C at 50a), apparently because Malnik was the more controversial and publicized of the two. Yet, as the Commission noted, discussion of the Cohen indictment "might well have brought the Lansky connection [to Malnik and Cohen] into sharper focus. The media allegations concerning Mr. Malnik and Mr. Cohen, then sought to be baseless, might not have been so readily dismissed". *Ibid.* Moreover, outside counsel David Bernstein's stated concern at the meeting and later, as to the advisability of an alliance with the Sky Lake owners (App. C at 49a) "might not have been so lightly disregarded" (Aa156). Equally inexplicable, is the fact that the Perlmans considered Cohen's Commodities Act conviction, which they described as "technical," of such significance that it should be brought to the attention of the outside directors, but felt differently as to the Lansky "skim" indictment.

It was thus without the benefit of this information that CWI's outside directors were asked to consider the Sky Lake transaction. Given then outside director McElnea's conclusion that this information would have effected his disapproval of the project, it was perhaps the only way

that Clifford and Stuart Perlman could have ensured the Board's consent to the transaction (App. C at 51a).*

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* Events of similarly disturbing proportions, again evidencing Clifford Perlman's tolerance and encouragement of corporate alliances with men who were an anthema to legitimate casino operations, are revealed in the circumstances surrounding the acquisition and initial period of management of the first CWI casino, Caesars Palace, in Nevada, At the time of CWI's (then Lum's, Inc.) acquisition of Caesars Palace on September 30, 1969 Perlman was apprised of the gambling conviction record of Jerome Zarowitz, an employee of the previous owners whom Perlman retained as Director of the Casino Operations (App. C at 44a). Additionally, during the summer and fall of 1969 Clifford Perlman became aware of reports concerning Zarowitz' attendance at an alleged "little Appalachia" meeting with members of organized crime in Palm Springs in 1965 (App. C at 44a to 45a) as well as the Nevada Gaming Control Board's concerns about Zarowitz and his suitability for licensure by the State of Nevada (App. C at 45a). Notwithstanding this knowledge, Zarowitz was retained in his same executive capacity after the purchase settlement on September 30, 1969 until his resignation in April 1970 (*Ibid.*).

Perlman's willingness to rely upon Zarowitz' integrity, notwithstanding his questionable record and suspected ties, continued unabated in the midst of a possible skimming incident at Caesars Palace. In the six month period following the signing of the agreement to purchase Caesars Palace until the time when that purchase was completed, Caesars Palace suffered a loss of $932,266 before taxes, while continuing to be operated by the previous owners, including Zarowitz. During the same period of the prior year, Caesars Palace had a profit before taxes of $2,230,014 (App. C at 45a). Under the terms of the purchase agreement, any casino profits during the settlement period would inure to CWI (6T 1261-14 to 6T1263-4). CWI readily accepted, notwithstanding its cash poor position and without any independent audit investigation or other confirmation, Zarowitz' and other former owner's management explaination that losses in the settlement period were due to patron wins at the baccarat tables and, generally, to bad luck and the fortunes of gaming (App. C at 45a). This cavalier attitude and conduct continued even when more disturbing facts came to light.

(Footnote continued on following page)

It is clear from the record of the maze of transformations and restructuring that the Sky Lake deal was not an isolated, short-lived business association. On the contrary, Sky Lake itself involved no fewer than five renegotiations and envisioned an on-going debtor-creditor relationship with Malnik and Cohen for at least twenty years (Aa22 ¶9 to Aa 42 ¶39). And each time means to extricate CWI presented themselves, the Perlmans remained curiously committed to the transaction, despite the substantial losses engendered thereby. Moreover, Sky Lake was to be just the beginning of a long-standing and significant business relationship with Malnik, Sam Cohen's sons and indirectly Sam Cohen himself.

(Footnote continued from preceding page)

On December 12, 1970, federal agents, in the course of executing search and arrest warrants at Caesars Palace uncovered funds in lockboxes assigned to Zarowitz ($1,100,000) and two Caesars Palace executives, Elliot Price ($325,000) and Sanford Waterman ($135,000) (App. C at 46a). Neither Clifford Perlman, who had taken personal charge of the Palace after this occurrence and who had hired Waterman to head casino operations based on Zarowitz' recommendation, nor anyone else on behalf of CWI confronted Zarowitz, Price or Waterman regarding this event nor made any efforts to determine the source of these monies (App. C at 46a). Even when apprised of the fact that several of his employees were subpoenaed to testify before a Securities and Exchange Commission hearing as to a possible skimming operation during the settlement period, and that an employee, Jerry Gordon, had been indicted on March 25, 1971, along with Sam Cohen, Meyer Lansky, Morris Lansburgh and others, for income tax evasion arising from an alleged skimming operation at the Flamingo Hotel, a neighboring casino, Clifford Perlman never inquired of them as to their knowledge of possible skimming at Caesars Palace (App. C at 46a to 47a). Indeed in response to the Nevada gaming authorities' directive that Gordon be dismissed by reason of this indictment, Clifford Perlman intervened so as to enable Gordon to take a temporary leave of absence in lieu of discharge (App. C at 47a).

Thus, in the early summer of 1972 Clifford Perlman joined with Alvin Malnik and Joel and Alan Cohen, sons of Sam Cohen, in the purchase of a partially completed high-rise condominium complex in Miami (App. C at 51a). The project (later designated the Cricket Club) involved a commitment by Mr. Perlman of millions of dollars in loan guarantees, indemnifications and substantial loans and in addition placed Clifford Perlman in an intimate relationship as corporate decision maker with Alvin Malnik (App. C at 51a to 52a)*

In November 1972 Philip Hannifin, then Chairman of the Nevada Gaming Control Board, the investigatory arm of the Nevada Gaming Commission, became apprised through newspaper publicity of these undertakings with Malnik and arranged to meet with Clifford Perlman to voice his concerns (App. C at 52a). As a consequence of the meeting Mr. Perlman made a firm commitment to extricate himself from the Cricket Club if Malnik would not institute a libel suit against Hank Messick, author of a book entitled *Lansky* in which allegations of Malnik's association with Meyer Lansky had been made (App. C at 52a; 53a to 54a; 48a to 49a). Despite Malnik's subsequent failure to file

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* In this transaction Mr. Perlman also acquiesced in the selection of Cal Kovens as general contractor, unconcerned with his knowledge that Kovens had been convicted with Jimmy Hoffa for fraud and conspiracy to use $1 million of Teamsters Pension funds to finance a real estate venture (App. C at 51a). Notwithstanding this conviction, subsequent cost overruns in the millions of dollars and costly delays, the Cricket Club construction budget was never audited (6T1375-4 to 6T1376-7). Similarly Mr. Perlman was unperturbed that Samuel Cohen—both while under indictment and subsequent to his Flamingo "skim" conviction—lent nearly $7 million to the Club; $2 million was also borrowed from Comal Corporation, of which Malnik and Cohen were partners (Aa58 to Aa60 ¶72; Aa158; App. C. at 51a).

such an action and notwithstanding his pledge to the Nevada Commission, Clifford Perlman chose to continue his involvement in the project full scale, guaranteeing new loans throughout its construction period and lending large sums of money to the corporations without ever discussing its propriety with Hannifin (See Aa49 ¶52 (iv); Aa50 ¶52 (v); Ra346 to Ra348; Aa51 ¶¶44, 54 and 55; 6T1185-4 to 6T1185-18; 7T1425-5 to 9; 7T1426-3 to 16; App. C at 52a).*

Moreover, notwithstanding Perlman's pledge and in the face of his and his brother's knowledge of the pledge and the Nevada Commission's concerns as to Malnik's bad reputation (17T3279-23 to 17T3284-6), Clifford Perlman, with Stuart Perlman's acquience, engineered CWI's entry into a sale and leaseback of CWI Pocono properties with Cove Associates, a Florida partnership comprised of Malnik and Sam Cohen's two sons on February 20, 1975.**

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* The last of these loan loan transactions, as will be discussed *infra*, followed a series of meetings with the Nevada Gaming Commission in which it was stated unequivocally, that neither the Perlmans nor CWI should embark on any further business relationships with Malnik or enlarge existing relationships (Ra324-19 to Ra325-15). This loan also violated the Commission's 1976 directive that no future loans could be made unless prior approval by the Commission was first obtained (Ra347 to Ra348).

** This complex transaction would provide Malnik with $618,000 annual profit (plus title to the land and buildings) without investment of one cent of his own funds. Additionally, although the transaction as originally conceived did not require any direct involvement with Samuel Cohen, CWI later did request and received in connection with the Cove Haven leaseback a deferral of principal and interests payments due on the Sky Lake property (to Cohen and Malnik) between January 1, 1975 and July 1, 1976 (Aa41 to Aa42 ¶38; Aa167).

In so doing the Perlmans neither disclosed to the CWI Board the occurrence, no less the substance of the Hannifin conversation during the Boards deliberations as to this transaction (hereafter "Cove Haven") (App. C at 55a). As with Sky Lake, the Perlmans presumed the independent directors knew of this fact even though the insiders made no such disclosure and the subject was neither raised nor considered at the Board meeting (*Ibid.*).*

Significantly, the Cove Haven transaction, which appellant's attorneys recognized as "atypical and very costly" (Ra369) was envisioned by CWI's leaders as the first step in refinancing of the CWI debt (*Ibid.*). Thus, in the late summer or early fall of 1975 Clifford Perlman met with Malnik at the latter's request to discuss possible refinancing of Caesars Palace through a sale and leaseback transaction (3T451-20 to 3T452-2; 3T567-20 to 3T568-24; 7T 1484-12 to 7T1486-3; Aa235 to Aa236).

Consideration of the Malnik refinancing proposal may have only been aborted by a highly critical November

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* The failure by both Perlmans to advise the Board of the warnings given by Hannifin was justified by them on the grounds that Hannifin's concern lay only with Clifford Perlman's *personal* dealings with Malnik, and not the corporation's. The absurdity of the distinction was pointed out graphically to Clifford Perlman by Hannifin at a December 1975 Nevada Gaming Commission hearing:

> That is the very point where you demonstrate your insensitivity. This just festers in my stomach to hear this explanation because I cannot accept it. If it was not right for Perlman to engage with Malnik, it can't be right for your company to engage with Malnik. Now, that is common sense; it is logical. If one flows from the other, one flows from the other. To try to circumvent that or traverse it with that explanation . . . is absolutely unacceptable to me (Ra343-3 to 11).

1975 Los Angeles Times article regarding business transactions between CWI and Malnik (7T1484-12 to 7T1486-3; 2T368-12 to 25; Aa211). Soon thereafter the Nevada Gaming Control Board as the result of an investigation of the Cove Haven transaction conducted a hearing with representatives of CWI in attendance, including Clifford Perlman (Ra307). Therein, it was made unmistakably clear that there were to be no further dealings with Malnik; that existing relationships if possible should be ended and that there should be no expansion of existing relationships.* Hannifin insisted that Perlman immediately dispose of his interest in the Cricket Club (6T1217-24 to 6T 1218-5) and as a result Perlman placed his stock in the Cricket Club and Jomal Corporation in an irrevocable proxy with the Valley Bank of Nevada in June 1976 (Aa55 to Aa66 ¶63). CWI understood and agreed that there would be no enlargement of existing transactions with Malnik (1T192-2 to 7; 2T368-12 to 18; 8T1644-23 to 8T1646-16).**

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* Chairman Echeverria addressed Perlman pointedly at that meeting:

> "Mr. Perlman, I am going to lay this monkey on your back. This Malnik situation is bad, and we have got to get the thing cleared up. I don't want him associated with any legalized gaming operation in the State of Nevada over which we have any jurisdiction. You, I understand . . . made a pledge to the Board and the Commission . . . if [Malnik] didn't file a suit against Messick that you would disavow any connection with Malnik; and after that . . . you have two other property transactions with Malnik . . . Now those things are disturbing . . ." (Ra312-20 to Ra313-9).

** Although viewing Perlman's violation of his commitment to Hannifin and repeated involvement of Caesars with Malnik as

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Notwithstanding these directives and Hannifin's statement at the December 1975 meeting that he believed it "incontrovertible that Mr. Malnik can be described as an associate in the business world of Meyer Lansky. . . ." (Ra324-21 to 25), Clifford Perlman exchanged checks for $25,000 with Alvin Malnik (Ra549 to Ra555; 7T1497-19 to 7T1499-17). And on December 31, 1976, Clifford Perlman with the assistance of his brother who was aware of the Nevada directive (14T2986-6 to 12) lent the Cricket Club $75,000 to take advantage of tax write-offs (14T2966-12 to 24; 14T2967-9 to 15; Aa51 ¶54; Ra556 to Ra618). Equally disturbing is the fact that Clifford Perlman never contacted the Nevada gaming authorities in advance of these tranactions (7T1492-3 to 7T1494-12), even though re-required by the Nevada directive (Ra346 to Ra348).

In light of such testimony and documentary evidence establishing a telling absence of candor and integrity in Clifford Perlman's relationship with the CWI Board and Nevada gaming officials, the New Jersey Casino Control Commission concluded that the affirmative character evidence presented on Clifford Perlman's behalf (App. C at 43a to 44a) was cast in great doubt (App. C at 56a). Additionally, the Commission concluded that based on the federal indictments and convictions of Samuel Cohen for

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(Footnote continued from preceding page)

grounds for disciplinary action (Ra260-9 to 24), including revocation of Caesar's license (Ra261-8 to Aa262-9), the Nevada Commission chose instead to impose certain conditions upon CWI's operations which were deemed to be a substantial sanction (Ra263-24 to Ra264-15). Thus, on April 13, 1976, the Commission issued an order precluding CWI from, among other things, associating with, either socially or in business affairs, persons of unsavory or notorious reputations and requiring CWI to report transactions in the same manner as the holder of the gaming license, its subsidiary Desert Palace, Inc. (6T1218-12 to 6T1218-18; Aa281).

Commodity Exchange Act and Internal Revenue Service Code violations as well as the widespread publicity the latter indictment received in the Miami press, Samuel Cohen must be deemed a person of "unsuitable character and unsuitable reputation" (App. C at 57a). They further concluded Alvin Malnik to be of such unsuitable character and reputation based on the evidence of his close association with top organized crime officials (*Ibid.*). In view of the circumstances of Clifford Perlman's initiation and encouragement of CWI's "direct, intense, long-lasting association with these men . . ." and his own personal involvement with them the Commission found him to be lacking the good character, honesty and integrity demanded by the Casino Control Act (App. C at 57a to 59a). Similarly, the Commission deemed Stuart Perlman's: (1) approval and implied encouragement of the Board's acceptance of the Sky Lake and Cove Haven transactions with full knowledge of the Cohen indictment and later the substance of the Hannifin warning in conjunction with Cove Haven; and (2) his knowing advancement of Clifford Perlman's business interests, irrespective of violation of regulatory concerns (notably the December 1975 $75,000 loan to the Cricket Club, see p. 12 *supra*), evidence of a lack of candor and integrity, thus rendering him equally unsuitable for casino licensure (App. C at 59a to 60a).

BRC, its parent companies and the Perlmans on November 6 and 14, 1980 filed Notices of Appeal from the Commission's final orders* (App. D; App. E). In a comprehensive

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*Although the Commission's findings as to the Perlmans' disqualification would have justified denial of the BRC license and appointment of a conservator, see N.J.S.A. 5:12-130.1, the Com-

(Footnote continued on following page)

decision issued on July 21, 1981 the Superior Court of New Jersey, Appellate Division concluded that the Commission's determination that the Perlmans had failed to satisfy the statutory requirement of producing clear and convincing evidence of their good character, honesty and integrity was supported by substantial evidence in the record (App. B at 18a to 22a). The Court further found that the Commission's findings therein did not rest upon any "guilt by association" theory, (App. B at 32a to 33a) and that the statutory standard of "good character" was not unconstitutionally vague (App. B at 29a to 32a). The Court accordingly affirmed the Commission's decision as to the ineligibility of the Perlman brothers for licensure, reversing, however, that portion of the Commission order requiring the Perlmans' stock divestiture and removal from non-New Jersey and non-gaming CWI subsidiaries (App. B at 33a to 34a).

On August 10, 1981 the Perlmans and the corporate appellants filed Notices of Appeal from the adverse portions of the Appellate Division decision; that same date the

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mission fashioned an alternative and less drastic remedy: the issuance of a license subject to conditions deemed minimally essential in order to effectuate the serious concerns of the Legislature in regulating the sensitive casino industry. The Commission directed BRC to choose and outline plans within thirty days for: either the cessation of BRC's operations; or, if BRC were to continue to operate, the Perlmans' divestiture of all securities and their removal from all positions in CWI, BRC, CNJ and the CWI subsidiaries. Appellants subsequently obtained from the Supreme Court of New Jersey a stay of this order (App. A at 2a to 3a). Thereafter, by the terms of an agreement approved by the Casino Control Commission on December 15, 1981, the Perlmans sold to CWI their shares of CWI and CNJ stock and resigned from all positions as officers and directors of CWI and its subsidiaries (App. A at 4a).

Casino Control Commission and the Attorney General of New Jersey filed notices of petitions for certification to review the Appellate Division's modification of the Commission's order. On August 17, 1981 the Attorney General of New Jersey also filed a Notice of Cross-Appeal as to that determination.

In a decision rendered on July 21, 1982, the Supreme Court of New Jersey affirmed the conclusions of the Appellate Division except as to the Perlmans' removal from the non-New Jersey non-gaming CWI interests, thereby reinstating in full the Casino Control Commission's final orders (App. A at 7a to 9a).

On October 18, 1982, appellants Clifford and Stuart Perlman filed a Notice of Appeal with the Court pursuant to 28 U.S.C. §1257(2). Appellee has filed the within motion to dismiss or alternatively, to affirm on the grounds that no substantial federal constitutional question is raised by this appeal.

ARGUMENT

This case presents no substantial constitutional questions not previously decided by the Court.

By this appeal, appellants seek, in effect, to thwart the efforts of the New Jersey Casino Control Commission to insure to the citizens of the State of New Jersey that only those individuals who by their past actions have demonstrated their good character and integrity as well as their adherence to regulatory standards of conduct will be permitted to control or influence casino gaming in the State. In so doing, appellants do not proffer any substantial constitutional claims. Rather they press an as applied challenge to New Jersey's casino license disqualification statu-

tory provisions which is without any factual or legal support. Since the State's regulatory casino agency and appellate courts have comprehensively and properly addressed these contentions and because no issue of any constitutional significance is presented herein, the appeal should be dismissed, or in the alternative the judgment below should be affirmed.

A. The requirement of N.J.S.A. 5:12-89(b)(2) that a key employee of a casino establish by clear and convincing evidence his good character, honesty and integrity and reputation for same was properly and constitutionally applied in the instant matter so as to justify appellants' disqualification.

In response to the deep public concern as to the desireability of permitting casino gambling within the State, and by reason of its judgment that casino operations and ancillary industries were particularly vulnerable to direct or indirect entry by persons "who have pursued economic gains in an occupational manner or context which are in violation of the criminal or civil public policies of th[e] State," N.J.S.A. 5:12-1(b)(9), the New Jersey Legislature enacted casino regulatory legislation of an "extraordinarily pervasive and intensive" nature. *Knight* v. *City of Margate,* 86 N.J. 374, 381, 431 A.2d 833, 836 (1981). Specifically, to foster what it perceived to be the "integral and essential" element of public confidence and trust in the "credibility and integrity of the regulatory process and of casino operations," N.J.S.A. 5:12-1(b)(6), the Legislature concluded that "strict State regulation" of "all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries" would be required. Consistent with this policy the Legislature mandated that those persons whose stock

holdings, employment status, corporate board positions or influence otherwise in the operation of a New Jersey casino would be deemed significant by the Casino Control Commission, see N.J.S.A. 5:12-85-(c); N.J.S.A. 5:12-89, would be required to establish by clear and convincing evidence their good character, honesty and integrity as well as their reputation for same. N.J.S.A. 5:12-89(b)(2); App. A at 6a; App. B at 26a to 29a; App. C at 40a.

Unlike the circumstances presented in cases such as *Konigsberg* v. *State Bar*, 353 U.S. 252 (1957), *Schware* v. *Board of Bar Examiners of the State of New Mexico*, 353 U.S. 232 (1957) or *Baird* v. *State Bar of Arizona*, 401 U.S. 1 (1971) where findings of the bar applicants' lack of good character were unsupported by any facts demonstrating their personal involvement in conduct inimical to the practice of law, here the Commission's decision is replete with findings establishing the Perlmans' unsuitability for casino licensure. As the Court has acknowleged in *Schware* v. *Board of Bar Examiners, supra* at 239, a State may legitimately deny licensure upon a demonstration of past conduct which reflects adversely on the applicant's good character and capacity therefore to satisfy legislative objectives in regulating a particular profession or activity. That test is surely met here. Thus, the record reveals these casino owners' on-going and extensive commercial relationships with or employment of men they knew to be reputed or established by criminal conviction as associates of Meyer Lansky and/or as participants in casino "skimming" operations. Equally significant is the fact that notwithstanding their positions as Chairman and Vice-Chairman they deliberately withheld at the time of the CWI Board's consideration of major corporate ventures: 1) critical and pertinent information as to the criminal casino "skimming" record of a leading participant in the transaction, Sam Cohen; and later 2) the Nevada Gam-

ing Commission's voiced concerns and warnings as to any continued business dealings with a second participant, Alvin Malnik. Finally, the record presents the Perlmans' willful violation of the Nevada Gaming Commission's directives in 1975 as to cessation of any further business activity with Malnik. The Perlmans' conscious disregard of fiduciary obligations and callous indifference to regulatory concerns in these matters as well as the numerous concessions to Malnik and Cohen to which they acquiesced readily makes evident the reasonableness of the Commission's judgment below that it could place little confidence in the Perlmans' future ability or desire to obey the directives of the agency or to give heed, as the New Jersey Legislature has demanded, to the public's concerns that organized crime figures not be permitted to influence or infiltrate casino operations in the State. While all of these actions of the Perlmans may have sprung from associations, they have independent significance therefrom in that they reflect the Perlmans' conduct and character. Thus viewed and consistent with the grave statutory responsibility of the Casino Control Commission in regulating this highly sensitive industry, the challenged associations and their circumstances were properly and appropriately weighed in evaluating the Perlmans' character. See *Law Students Research Council* v. *Wadmond*, 401 U.S. 154, 159-160 (1971).

Accordingly, contrary to appellants' myopic reading of the record below, the basis for the Commission's determination as to the lack of a persuasive demonstration of the Perlmans' good character rested not upon the mere association of Clifford Perlman with Alvin Malnik and the consanguinity of Clifford and Stuart Perlman, but upon the willful, and in many instances, deceptive action taken by each of the Perlmans which resulted in advancing the interests of reputed as well as convicted organized crime figures at the expense of the interests of

CWI and in the face of Nevada casino regulators' opposition. The "insensitivity" to public concerns, noted by the court below (App. B at 24), therefore is not a veiled attempt to resurrect the proscribed "guilt by association" licensing criterion to trap the unwary but a fitting description of the Perlmans' abdication of their obligations as leaders in the Nevada casino industry.* The Perlmans' conduct was the basis of this decision, not that of their associates.

The decision entered below therefore constitutes a soundly reasoned application of the statutory disqualification criteria for casino licensure. As such, the denial of licensure herein must be deemed a legitimate exercise of the State police power and not violative of any constitutional interests of appellants. Accordingly, since this matter has been properly determined by the courts below and since no substantial constitutional questions are presented, this appeal should be dismissed or alternatively, the judgment of the Supreme Court of New Jersey should be affirmed.

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* Despite appellants' protestations to the contrary (Js11), it is obvious that many of the events considered by the New Jersey Casino Control Commission as crucial in their determination of the Perlmans' unsuitability for licensure were matters which had previously been a source of contention between the Perlmans and the Nevada Gaming Commission.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the within appeal should be dismissed for want of a substantial federal constitutional question which would require plenary consideration by this Court or alternatively, the final decision of the Supreme Court of New Jersey should be affirmed.

Respectfully submitted,

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